

Legislation Must Not Affect Existing Stock Water Permit Exempt Well Users

The Proposal: Legislation must not affect existing permit exempt well users who use their wells for stock water purposes.

Elements of the Proposal: Legislation needs to specifically grandfather in existing uses. It may make sense to include a Legislative Intent section that specifically describes the intent of the Legislature to confirm the validity of the water rights used by existing operations under the authority of the exemption. Additionally, legislation should provide a process for existing operations that rely on the exemption to declare their existing water use and have the use of that water registered and verified by Ecology.

Why it is needed: In order to protect water users that are currently using ground water based on the language of the exemption currently, legislation should specifically state that the Act does not affect existing exempt well users using ground water for stock water purposes as of the effective date of the Act.

Sometimes, the Legislature will want legislation to have a retroactive effect. In those cases, the legislation will specifically include language such as "this act is remedial in effect and is retroactive." In other situations, the Legislature will be silent on the issue of retroactive effect and leave it to a court to determine whether there is a retroactive effect.

In some circumstances, the Legislature will specifically allow for "grandfathering." As an example, when regulating new professions, the Legislature will often allow applicants who register before a date certain to become licensed without an examination, provided they meet the current educational and experience requirements.

Other times, the Legislature uses the intent section to describe the situation as it exists at the time the legislation is adopted. As an example, when the groundwater code was adopted in 1945, it contained language stating that the code was subject to existing rights, which in effect kept all of the existing rights in place.

In this situation, it is critical to develop a legislative proposal that recognizes and protects existing operations that are currently using water for stock water purposes under the exemption. As noted in Jay Manning's letter dated February 17, 2009, "our intent here is not to harm the industry. We understand the economic importance of the livestock and dairy industries in Washington." As such, it is important that legislation addressing the stock water portion of the exempt well statute be prospective only in order to protect existing users of exempt wells for stock-water purposes. For water management purposes, legislation should also establish a process under which users must provide Ecology with information about their existing water use.

Related Elements: Specific language grandfathering in existing users of ground water for stock-water purposes under the permit exemption assumes enactment of other proposals that would place a volumetric cap upon the Ground Water Code permit exemption for stock water purposes and would require Water Code approval for uses above the cap.